

**STATE OF MICHIGAN
IN THE SUPREME COURT OF THE STATE OF MICHIGAN**

ERIC L. VANDUSSEN,

Case No. 164847

Plaintiff,

v

JACKSON COUNTY 4TH CIRCUIT
COURT JUDGE THOMAS WILSON,

Defendant.

ERIC L. VANDUSSEN
Plaintiff in pro per
P.O. Box 30
Benzonia, MI 49616
(231) 651-9189
ericlvandussen@gmail.com

Hon. Thomas Wilson – 4TH Circuit Ct. Judge
Defendant
312 South Jackson Street
4th Floor
Jackson, MI 49201
twilson@mijackson.org

MOTION FOR LEAVE TO FILE SUPPLEMENTAL PLEADINGS
PURSUANT TO MCR 2.118(E)

Plaintiff, Eric L. VanDussen, respectfully requests, pursuant MCR 2.118(E), that this Honorable Court grant him leave to file and serve supplemental pleadings in this matter to state transactions and events that have happened since this Plaintiff initiated this action. In support of this motion, Plaintiff states:

1. On September 28, 2022, Plaintiff filed in this Court an EMERGENCY COMPLAINT FOR WRIT OF SUPERINTENDING CONTROL AND FOR ORDER TO SHOW CAUSE WHY THE DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF THE SUPREME COURT, which alleges that Defendant violated Michigan Supreme Court Administrative Order 1989-1 by summarily refusing to grant Plaintiff media access request to film, record and/or photograph Defendant's court proceedings.

2. On September 30, 2022, Defendant was personally served with Plaintiff's superintending control complaint, along with a brief and a motion for immediate consideration.

3. On October 3, 2022, Plaintiff arrived at the Jackson County courthouse at 8:00 AM to attend the trial of Wolverine Watchmen Pete Musico, Joseph Morrison and Paul Bellar. Jury selection was scheduled to commence in Defendant's courtroom at 9:00 AM on that date.

4. On October 3, 2022, Defendant completely prohibited Plaintiff from attending and observing the jury selection of the trial that Plaintiff had previously requested in writing to film, record and/or photograph.

5. On October 4, 2022, at approximately 8:30 AM, Plaintiff filed with the Jackson County Clerk an EMERGENCY MOTION TO SET ASIDE JUDGE THOMAS WILSON'S ORDER PROHIBITING ERIC L. VANDUSSEN'S ACCESS TO JURY SELECTION, along with a Judge's Copy of same. **(EXHIBIT 1)**

6. Plaintiff argued in paragraph seven of Plaintiff's Emergency Motion to Set Aside Defendant's Order Prohibiting Plaintiff's Access to Jury Selection that:

Public trial rights extend beyond the accused and can be invoked under the First Amendment. Additionally, it is well-settled case law that the voir dire process, including individual voir dire, should take place in open court under the observation of the community. *Press-Enterprise Co. v. Superior Court of Cal., Riverside Cty.*, 464 U. S. 501 (1984) (Press-Enterprise I); *Presley v. Georgia*, 558 U.S. 209 (2010).

7. At approximately 9:15 AM, on October 4, 2022, Defendant's law clerk provided to Plaintiff a written Order that indicated, in pertinent part, that:

IT IS SO ORDERED, Intervenor's motion is **denied**. Denial of Intervenor VanDussen's access to Jury Selection is the result of Intervenor continuous defiant behavior and attitude to the decision of the Court.

Specific reasons for the decision to limit Intervenor were placed on the record on October 3, 2022. [emphasis in original] **(EXHIBIT 2)**

8. Defendant apparently orally ordered that Plaintiff was not allowed to attend any proceedings in Defendant's courtroom on October 3, 2022, so Plaintiff has no idea what Defendant is referring to when Defendant alleges that Plaintiff was exhibiting "continuous defiant behavior and attitude to the decision of the Court."

9. Plaintiff likewise was not permitted to attend any alleged hearing in which Defendant gave "specific reasons" that were "placed on the record on October 3, 2022," to supposedly justify Plaintiff's preclusion from said jury selection.

10. Defendant, while acting under color of state law, violated Plaintiff's First Amendment rights in at least five ways when ordering that Plaintiff could not attend and observe said jury selection:

- (i) Defendant's exclusion of Plaintiff from said jury selection unconstitutionally disrupts and interferes with Plaintiff's ability to gather and report the news;
- (ii) Defendant's exclusion of Plaintiff from said jury selection is an unconstitutional restriction on Plaintiff's right of access to information about public court proceedings;
- (iii) Defendant's exclusion of Plaintiff from said jury selection is unconstitutional content and/or viewpoint-based discrimination;
- (iv) Defendant's exclusion of Plaintiff from said jury selection is an unconstitutional retaliation for Plaintiff's First Amendment-protected activity; and
- (v) Defendant's exclusion of Plaintiff from said jury selection is an unconstitutional restriction on the exercise of Plaintiff's rights under the First Amendment's guarantee of freedom of the press, for which Defendant has provided is no compelling justification.

11. Jury selection in said trial was completed in the afternoon of October 4, 2022, and

Defendant then allowed Plaintiff to enter Defendant's courtroom to observe Defendant read initial instructions to the jury and at that time Plaintiff was informed by Defendant's law clerk that Defendant was not allowing Plaintiff to utilize his laptop computer in Defendant's courtroom to cover and report on said trial.

12. Plaintiff informed Defendant's law clerk that Plaintiff's portable electronic devices had never been disruptive in Defendant's courtroom and that it would be very difficult for Plaintiff to cover this monumental trial without being allowed to utilize his portable electronic devices in Defendant's courtroom.

13. On October 4, 2022, Plaintiff personally observed that Defendant allowing reporters from MLive and the Detroit News to utilize their laptop computers during said trial that is currently proceeding in Defendant's courtroom.

14. On October 4, 2022, Plaintiff took a picture outside of Defendant's courtroom of Defendant's written policy regarding cell phone usage, which indicates that "NO CELL PHONE USE IN COURTROOM OR YOUR PHONE WILL BE SEIZED." (**EXHIBIT 3**)

15. MCR 8.115(C) governs the "Use of Portable Electronic Devices in a Courthouse."

16. MCR 8.115(C)(1) indicates, in pertinent part, that:

This rule specifies the permitted and prohibited uses of portable electronic devices in a courthouse. A court must use reasonable means to advise courthouse visitors of the provisions of this rule. **Any allowed use of a portable electronic device under this rule is subject to the authority of a judge to terminate activity that is disruptive or distracting to a court proceeding**, or that is otherwise contrary to the administration of justice. This rule does not modify or supersede the guidelines for media coverage of court proceedings set forth in AO No. 1989-1. [emphasis added]

17. At no time did Plaintiff's utilize any portable electronic device in Defendant's courtroom so it is impossible for Plaintiff to have ever disrupted or distracted Defendant's court

proceeding with Plaintiff's portable electronic devices.

18. MCR 8.115(C)(2)(a) indicates, in pertinent part, that:

“portable electronic device” is a mobile device capable of electronically storing, accessing, or transmitting information. The term encompasses, among other things, a transportable computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone, or other wireless phone; a camera and other audio or video recording devices; a personal digital assistant (PDA); other devices that provide internet access; and any similar items.

19. MCR 8.115(C)(5) indicates, in pertinent part, that:

The following provisions apply to use of portable electronic devices in a courtroom by attorneys, parties, and members of the public.

(a) Allowed uses: Attorneys, parties, and members of the public may use a portable electronic device in a courtroom to retrieve or to store information (including notetaking), to access the Internet, and to send and receive text messages or information. [...] [emphasis added]

20. MCR 8.115(C)(7) states that:

If these rules are violated, the presiding judge may confiscate the device for the remainder of the day or order that the phone be turned off and put away. Violations of this rule are punishable by appropriate sanctions up to and including contempt of court as determined in the discretion of the court. [emphasis added]

21. Plaintiff has never violated MCR 8.115 in Defendant's courtroom or any other judge's courtroom in Michigan.

22. Defendant's blanket policy of prohibiting all cell phone use in Defendant's courtroom clearly violates MCR 8.115(C)(5).

23. Defendant's prohibition of Plaintiff's right to utilize his laptop computer in Defendant's courtroom to “retrieve or to store information (including notetaking), to access the Internet, and to send and receive text messages or information,” clearly violates MCR 8.115(C)(5).

24. Defendant, while acting under color of state law, violated Plaintiff's First Amendment rights in at least five ways when ordering that Plaintiff cannot utilize his laptop computer in Defendant's courtroom during said trial:

- (vi) Defendant's prohibition of Plaintiff's utilization of his laptop computer during said trial unconstitutionally disrupts and interferes with Plaintiff's ability to gather and report the news;
- (vii) Defendant's prohibition of Plaintiff's utilization of his laptop computer during said trial is an unconstitutional restriction on Plaintiff's right of access to information about public court proceedings;
- (viii) Defendant's prohibition of Plaintiff's utilization of his laptop computer during said trial is unconstitutional content and/or viewpoint-based discrimination;
- (ix) Defendant's prohibition of Plaintiff's utilization of his laptop computer during said trial is an unconstitutional retaliation for Plaintiff's First Amendment-protected activity; and
- (x) Defendant's prohibition of Plaintiff's utilization of his laptop computer during said trial is an unconstitutional restriction on the exercise of Plaintiff's rights under the First Amendment's guarantee of freedom of the press, for which Defendant has provided is no compelling justification.

25. Under MCR 2.118(A)(2), a party may move to amend a pleading by leave of the court, and "[l]eave shall be freely given when justice so requires."

26. In *Miller v. Chapman Contracting*, 477 Mich. 102, 105; 730 NW2d 462 (2007), this Court reiterated the well-established principles regarding motions to amend pleadings:

Under MCR 2.118(A)(2), leave to amend pleadings should be freely given when justice so requires. Leave to amend should be denied only for particularized reasons, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party, or where amendment would be futile ... (citations omitted)

27. MCR 2.118(E) relates to “Supplemental Pleadings” and indicates that:

On motion of a party the court may, on reasonable notice and on just terms, permit the party to serve a supplemental pleading to state transactions or events that have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or a defense. The court may order the adverse party to plead, specifying the time allowed for pleading.

28. In *Buck v. Thomas M. Cooley Law Sch.*, 597 F.3d 812, 817 (CA 6 2010), the Sixth Circuit Court of Appeals instructed that:

Under Michigan law, a plaintiff has a duty to supplement [a] complaint with related factual allegations that develop “during the pendency of” [a] state suit or have them barred by res judicata. See *Adair*, 470 Mich. at 125, 680 N.W.2d at 398; see also *Dubuc v. Green Oak Twp.*, 312 F.3d 736 (6th Cir.2002).

WHEREFORE, Plaintiff respectfully request that this Honorable Court grant him leave to supplement his Complaint for Writ of Superintending Control, which was filed with this Court on September 28, 2022, and permit Plaintiff to allege in an amended pleading that Defendant (a) is violating MCR 8.115(C)(5) with his blanket policy of prohibiting all cell phone use in Defendant’s courtroom; (b) is violating MCR 8.115(C)(5) by prohibiting Plaintiff’s utilization of his laptop computer during said trial; (c) violated Plaintiff’s First Amendment rights when ordering that Plaintiff could not attend and observe said jury selection; and (d) violated Plaintiff’s First Amendment rights when ordering that Plaintiff cannot utilize his laptop computer in Defendant’s courtroom during said trial.

Respectfully submitted,

October 5, 2022

/s/ Eric L. VanDussen
 Plaintiff in pro per
 P.O. Box 30
 Benzonia, MI 49616
 (231) 651-9189
ericvandussen@gmail.com

EXHIBIT 1

**STATE OF MICHIGAN
IN THE 4TH CIRCUIT COURT FOR THE COUNTY OF JACKSON**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

File Nos. 20-3173-FH,
 20-3172-FH, &
 20-3171-FH

v

PETE MUSICO,
JOSEPH MORRISON, and
PAUL BELLAR,

Hon. Thomas D. Wilson

Defendants.

Sunita Doddamani (P67459)
Michigan Department of Attorney General
Attorneys for Plaintiff

Kareem Johnson (P71988)
Attorney for Pete Musico

Eric L. VanDussen
Intervenor in Pro Per

Leonard Ballard (P81245)
Attorney for Joseph Morrison

Andrew Kirkpatrick (P66842)
Attorney for Paul Bellar

**EMERGENCY MOTION TO SET ASIDE JUDGE THOMAS WILSON'S ORDER
PROHIBITING ERIC L. VANDUSSEN'S ACCESS TO JURY SELECTION
& PROOF OF SERVICE**

ORAL ARGUMENT REQUESTED

Eric L. VanDussen, Intervenor in pro per on behalf of himself and VanDussen Productions, respectfully requests, pursuant MCR 8.116(D)(2), that this Honorable Court immediately set aside all oral or written Orders that are prohibiting Eric L. VanDussen's access to jury selection in the above caption cases. In support of this motion, Eric L. VanDussen states:

1. On October 3, 2022, Jackson County Circuit Court Judge Thomas Wilson completely prohibited Eric L. VanDussen from attending and observing the jury selection related to the prosecution of the three above-named defendants.

2. MCR 8.116(D) instructs that:

(1) Except as otherwise provided by statute or court rule, **a court may not limit access by the public to a court proceeding unless**

(a) **a party has filed a written motion that identifies the specific interest to be protected, or the court sua sponte has identified a specific interest to be protected, and the court determines that the interest outweighs the right of access;**

(b) **the denial of access is narrowly tailored to accommodate the interest to be protected, and there is no less restrictive means to adequately and effectively protect the interest; and**

(c) **the court states on the record the specific reasons for the decision to limit access to the proceeding.**

(2) **Any person may file a motion to set aside an order that limits access to a court proceeding under this rule, or an objection to entry of such an order.** MCR 2.119 governs the proceedings on such a motion or objection. If the court denies the motion or objection, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action. [emphasis added]

(3) **Whenever the court enters an order limiting access to a proceeding that otherwise would be public, the court must forward a copy of the order to the State Court Administrative Office.** [emphasis added]

3. Upon information and belief, no parties to these proceedings have filed any written motions that identify any specific interest to be protected, which would in any way justify Judge Wilson completely prohibited Eric L. VanDussen from attending and observing the jury selection related to the prosecution of the three above-named defendants.

4. Upon information and belief, Judge Wilson has not sua sponte identified any

specific interest to be protected, which would in any way justify him completely prohibited Eric L. VanDussen from attending and observing the jury selection related to the prosecution of the three above-named defendants.

5. Upon information and belief, Judge Wilson has not stated on the record any specific reason or reasons for his decision to limit Eric L. VanDussen's access to these court proceedings.

6. Upon information and belief, Judge Wilson has not forwarded to the State Court Administrative Office a copy of any Order he has issued that completely prohibited Eric L. VanDussen from attending and observing the jury selection related to the prosecution of the three above-named defendants.

7. Public trial rights extend beyond the accused and can be invoked under the First Amendment. Additionally, it is well-settled case law that the voir dire process, including individual voir dire, should take place in open court under the observation of the community. *Press-Enterprise Co. v. Superior Court of Cal., Riverside Cty.*, 464 U. S. 501 (1984) (Press-Enterprise I); *Presley v. Georgia*, 558 U.S. 209 (2010).

8. Judge Wilson, while acting under color of state law, is violating Eric L. VanDussen's First Amendment rights in at least five ways:

- (i) Judge Wilson's exclusion of Eric L. VanDussen from jury selection unconstitutionally disrupts and interferes with his ability to gather and report the news;
- (ii) Judge Wilson's exclusion of Eric L. VanDussen from jury selection is an unconstitutional restriction on his right of access to information about public court proceedings;

- (iii) Judge Wilson's exclusion of Eric L. VanDussen from jury selection is unconstitutional content and/or viewpoint-based discrimination;
- (iv) Judge Wilson's exclusion of Eric L. VanDussen from jury selection is an unconstitutional retaliation for his First Amendment-protected activity; and
- (v) Judge Wilson's exclusion of Eric L. VanDussen from jury selection is an unconstitutional restriction on the exercise of his rights under the First Amendment's guarantee of freedom of the press, for which Judge Wilson has provided is no compelling justification.

WHEREFORE, Intervenor Eric L. VanDussen respectfully request that this Honorable Court (a) expedite its consideration of this Motion and provide him with the opportunity to be heard on the issues presented herein at the earliest practical time; and (b) enter an Order immediately setting aside any previous oral or written Orders entered by this Court that are prohibiting Eric L. VanDussen's access to the jury selection in the above caption cases.

Respectfully submitted,

October 4, 2022

/s/ Eric L. VanDussen
 Intervenor in pro per
 P.O. Box 30
 Benzonia, MI 49616
 (231) 651-9189
ericvandussen@gmail.com

* * *

PROOF OF SERVICE

Eric L. VanDussen attests that on this date he did serve a copy of this EMERGENCY MOTION TO SET ASIDE JUDGE THOMAS WILSON'S ORDER PROHIBITING ERIC L. VANDUSSEN'S ACCESS TO JURY SELECTION & PROOF OF SERVICE upon all parties to

these cases by email, at:

AG Sunita Doddamani (P67459)
Doddamanis@michigan.gov

Kareem Johnson (P71988)
Kjohnson@mijackson.org

October 4, 2022

Leonard Ballard (P81245)
lballard@mijackson.org

Andrew P. Kirkpatrick (P66842)
andrew@jxnlaw.com

/s/ Eric L. VanDussen_____

EXHIBIT 2

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

STATE OF MICHIGAN,

Plaintiff,

V

BELLAR, MORRISON & MUSICO,

Defendant.

File No. 20-3171-FH, 20-
3172-FH, & 20-3173-FH

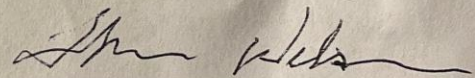
Hon. Thomas D. Wilson

ORDER

WHEREAS the Court received an Emergency Motion to Set Aside an Order Prohibiting Eric VanDussen's Access to Jury Selection filed herein.

IT IS SO ORDERED, Intervenor's motion is **denied**. Denial of Intervenor VanDussen's access to Jury Selection is the result of Intervenor continuous defiant behavior and attitude to the decisions of the Court. Specific reasons for the decision to limit Intervenor were placed on the record on October 3, 2022.

Dated: October 4, 2022



Hon. Thomas D. Wilson
Circuit Court Judge

EXHIBIT 3

HONORABLE THOMAS D. WILSON

Courtroom Calendar For Hon. THOMAS D. WILSON				PAGE 1	
10/03/22 - 10/03/22 312 S JACKSON ST. JACKSON, MI 48226				COURT DATE: 10/03/22	
				COURT TIME: 7:30:34	
COURT DATE	CASE NUMBER	TYPE	NAME/CHARGE	10/03/2022	
MONDAY, OCTOBER 03, 2022					
CO438 401	20-003171	PH	AT 9:00 a.m.	A: KIRKPATRICK	
JURY TRIAL	942090034601		D01 BELLAR, PAUL EDWARD	P: DODDAMANI	
			TERRESTRIAL ACTS-PROVIDE MA		
			GANG MEMBERSHIP FELONIES		
			FELONY FIREARMS		
CO438 401	20-003172	PH	D01 MORRISON, JOSEPH, MATTHEW	A: BALLARD	
JURY TRIAL	942090034601		GANG MEMBERSHIP FELONIES	P: DODDAMANI	
			TERRESTRIAL ACTS-PROVIDE MA		
			FELONY FIREARMS		
CO438 401	20-003173	PH	D01 MURICO, PETE	A: JOHNSON	
JURY TRIAL	942090034601		GANG MEMBERSHIP FELONIES	P: DODDAMANI	
			TERRESTRIAL ACTS-PROVIDE MA		
			FELONY FIREARMS		

**NO CELL PHONE USE IN
THE COURTROOM OR
YOUR
PHONE WILL BE
SEIZED**

COURTROOM POLICY

DRESS APPROPRIATELY:
NO SHORTS, NO TANK TOPS. **NO HATS!**
NO FOOD OR DRINK.
NO AUDIBLE PAGERS.
NO RECORDING/FILMING BY ANY
MEANS
NO PICTURE TAKING
DO NOT SPEAK WITH THE INMATES!
DO NOT SPEAK OUT IN COURT.

CHECK IN WITH THE COURT OFFICER IF
YOU ARE HERE ON A CASE. IF YOU
HAVE AN ATTORNEY, THE ATTORNEY

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